

106TH CONGRESS  
1ST SESSION

# S. 613

To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 15, 1999

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Tribal Eco-  
5       nomic Development and Contract Encouragement Act of  
6       1999”.

1 **SEC. 2. CONTRACTS AND AGREEMENTS WITH INDIAN**  
2 **TRIBES.**

3 Section 2103 of the Revised Statutes (25 U.S.C. 81)  
4 is amended—

5 (1) by inserting “(a)” before “No agreement”;

6 (2) in subsection (a), as designated by para-  
7 graph (1) of this section—

8 (A) by striking “, or individual Indians not  
9 citizens of the United States,”;

10 (B) by striking “First. Such agreement”  
11 and inserting the following:

12 “(1) Such contract or agreement”;

13 (C) by striking “Second. It shall bear the  
14 approval of the Secretary of the Interior and  
15 the Commissioner of Indian Affairs endorsed up  
16 on it.” and inserting the following:

17 “(2) Except as provided in subsection (b), it  
18 shall bear the approval of the Secretary of the Inte-  
19 rior (referred to in this section as the ‘Secretary’) or  
20 a designee of the Secretary of the Interior endorsed  
21 upon it.”;

22 (D) by striking “Third. It” and inserting  
23 the following:

24 “(3) It”;

25 (E) by striking “Fourth. It” and inserting  
26 the following:

1 “(4) It”; and

2 (F) by striking “Fifth. It” and inserting  
3 the following:

4 “(5) It”;

5 (3) by inserting “(d)” before “All contracts”;

6 (4) by inserting after subsection (a) the fol-  
7 lowing:

8 “(b) Subsection (a)(2) shall not apply to a contract  
9 or agreement in any case in which—

10 “(1) the Secretary (or a designee of the Sec-  
11 retary) fails to approve or disapprove the contract or  
12 agreement by the date that is 90 days after the date  
13 on which the contract or agreement is filed with the  
14 Secretary under this section; or

15 “(2)(A) the tribe notifies the Secretary in a  
16 manner prescribed by the Secretary under sub-  
17 section (c)(3) that a contract or agreement is not  
18 covered under subsection (a); and

19 “(B) the Secretary (or a designee of the Sec-  
20 retary) fails to inform the tribe in writing, by the  
21 date that is 45 days after receipt of the notification  
22 under subparagraph (A), that the Secretary (or des-  
23 ignee) intends to review the contract agreement by  
24 the date specified in paragraph (1).

1       “(c)(1) The Secretary (or a designee of the Sec-  
2 retary) shall refuse to approve a contract or agreement  
3 that is filed with the Secretary under this section if the  
4 Secretary (or designee) determines that the contract or  
5 agreement—

6               “(A) violates Federal law; or

7               “(B)(i) is covered under subsection (a); and

8               “(ii) does not include a provision that—

9                       “(I) provides for remedies in the case of a  
10 breach of the contract or agreement;

11                      “(II) references a tribal code, ordinance, or  
12 ruling of a court of competent jurisdiction that  
13 discloses the right of the tribe to assert sov-  
14 ereign immunity as a defense in an action  
15 brought against the tribe; or

16                      “(III) includes an express waiver of the  
17 right of the tribe to assert sovereign immunity  
18 as a defense in an action brought against the  
19 tribe (including a waiver that limits the nature  
20 of relief that may be provided or the jurisdic-  
21 tion of a court with respect to such an action).

22       “(2)(A) The Secretary (or a designee of the Sec-  
23 retary) shall not approve any contract or agreement that  
24 is submitted to the Secretary for approval under this sec-

1 tion if the Secretary (or designee) determines that the con-  
2 tract or agreement is not covered under subsection (a).

3 “(B) If the Secretary determines that a contract or  
4 agreement is not covered under subsection (a), the Sec-  
5 retary shall notify the tribe of that determination.

6 “(3) To assist tribes in providing notice under sub-  
7 section (b)(2), the Secretary shall—

8 “(A) issue guidelines for identifying types of  
9 contracts or agreements that are not covered under  
10 subsection (a); and

11 “(B) establish procedures for providing that no-  
12 tice.

13 “(4) The failure of the Secretary to approve a con-  
14 tract or agreement under this subsection or to provide no-  
15 tice under paragraph (2)(B) shall not affect the applica-  
16 bility of a requirement under any other provision of Fed-  
17 eral law.”;

18 (5) in subsection (d), as redesignated by para-  
19 graph (3) of this section, by striking “paid to any  
20 person by any Indian tribe” and all that follows  
21 through the end of the subsection and inserting  
22 “paid to any person by any tribe or any other person  
23 on behalf of the tribe on account of such services in  
24 excess of the amount approved by the Secretary of  
25 the Interior, may be recovered in an action brought

1 by the tribe or the United States. Such an action  
 2 may be brought in any district court of the United  
 3 States, without regard to the amount in controversy.  
 4 Any amount recovered under this subsection shall be  
 5 paid to the Treasury of the United States for use by  
 6 the tribe for whom it was recovered.”; and

7 (6) by adding at the end the following:

8 “(e) Nothing in this section shall be construed to re-  
 9 quire the Secretary of the Interior to approve a contract  
 10 for legal services by an attorney.”.

11 **SEC. 3. CHOICE OF COUNSEL.**

12 Section 16(e) of the Act of June 18, 1934 (commonly  
 13 referred to as the “Indian Reorganization Act”) (48 Stat.  
 14 987, chapter 576; 25 U.S.C. 476(e)) is amended by strik-  
 15 ing “, the choice of counsel and fixing of fees to be subject  
 16 to the approval of the Secretary”.

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